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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 771

SEELEY TUBE AND BOX COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Referee in Bankruptcy (Pet. 15a-19a)[1] is not reported. The opinion of the District Court (Pet. 7a-14a) is reported at 120 F. Supp. 269. The opinion of the Court of Appeals (Pet. 3a-6a) is reported at 219 F. 2d 389.

JURISDICTION

The judgment of the Court of Appeals was entered on January 11, 1955 (Pet. 1a). The debtor's

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[1] References to the Appendix to the Petition will be designated "Pet. —a." References to the Record Appendices in the court below will be designated "R. —a" (Government's appendix) and "R. —b" (debtor-petitioner's appendix).

petition for a rehearing was denied on February 9, 1955 (Pet. 2a). The petition for a writ of certiorari was filed on May 6, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTION PRESENTED

Whether a bankruptcy court in a Chapter XI proceeding has jurisdiction over disputed and liquidated claims which have been brought to the referee's attention by counsel for the debtor-in-possession before confirmation and have been proved within the time specifically directed by the referee.

STATUTES INVOLVED

The pertinent provisions of Chapter XI of the Bankruptcy Act, 11 U. S. C. 701 *et seq.*, are as follows:

> Section 367 (11 U. S. C. 767):
>
> Upon confirmation of an arrangement—
>
> * * * * *
>
> (4) except as otherwise provided in sections 769 and 770 of this title, the case shall be dismissed.
>
> Section 369 (11 U.S.C. 769):
>
> The court shall in any event retain jurisdiction until the final allowance or disallowance of all debts affected by the arrangement which—
>
> (1) have been proved, but not allowed or disallowed, prior to the date of confirmation; or

(2) are disputed or unliquidated, have been scheduled by the debtor, and are proved within such time as the court may direct; or

(3) arise from the rejection of executory contracts by the debtor and are proved within such time as the court may direct.

STATEMENT

The debtor filed a petition for arrangement under Chapter XI of the Bankruptcy Act (11 U. S. C. 701 *et seq.*) on October 1, 1946 (R. 1b). Two contracts with the Government's Picatinny Arsenal, from which the claims now in dispute arose, were listed in the statement of executory contracts required by Section 324(1) of the Act (11 U. S. C. 724(1)) (R. 2a), but as they had not yet been declared in default, no claims thereon were included in the schedules accompanying the petition. On October 11, 1946, the United States gave notice to the debtor of its intention to terminate these two contracts because of the debtor's default in performance (R. 27a-28a), and on November 18 and 19, 1946, the contracts were terminated, the Government reserving the right in accordance with the terms of the contracts to hold the debtor liable for damages (R. 25a-27a). In reletting these contracts, the Government claimed that it was required to agree to a price in excess of that for which the debtor had promised delivery (R. 13a-14a, 16a-17a).

On February 28, 1947, the debtor filed an amended plan of arrangement (R. 3a-5a), providing for the payment in cash of all unsecured debts without any reduction in amount or extension of

time for payment. A hearing on the confirmation of this plan was held by the referee on March 21, 1947.[2] The United States was not represented in connection with the present claims,[3] but the matter was brought to the referee's attention by the debtor's own counsel. Early in the hearing, he indicated that he would ask that the time in which Picatinny Arsenal might file a claim be limited by the referee. The following colloquy occurred (R. 8a-9a):

The REFEREE: Is there a claim of the Picatinny Arsenal?

Mr. FREEMAN [counsel for the debtor]: The Picatinny Arsenal may have some claim.

The REFEREE: Have we put up enough money to meet it?

Mr. FREEMAN: No.

The REFEREE: Is there a problem there?

Mr. FREEMAN: We do not owe them any money,

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[2] Four days before, in his Petition for Allowances, the debtor's counsel had called the referee's attention to the existence of the Government's claims (R. 7a):

> The services still to be rendered further include a re-examination of various claims filed in the proceeding and applications to the Court to determine the extent and validity of some of such claims filed herein.
>
> The War Department has advised the debtor company that it has a claim against the debtor arising out of an alleged termination of a contract in the sum of approximately $20,000.00. This claim when finally asserted will be vigorously contested by the debtor.

[3] A Bureau of Internal Revenue attorney was present in connection with the Government's tax claim (R. 8a). However, he had no knowledge of the present claims (R. 9a) nor was he authorized to represent the Government with respect thereto.

and we want to bring them in. I want to state to your Honor further that the debtor company will deposit any sum of money that is represented by any claim that the Picatinny Arsenal may file in these proceedings within a time that your Honor directs them to file it.

The REFEREE: Have you any notion of what they might claim?

Mr. FREEMAN: We think they may claim $20,000.

The REFEREE: Have you $20,000 available?

Mr. FREEMAN: We have $94,000 available to pay them if necessary, and we represent to your Honor that there will be at all times $20,000 or more available to dispose of that claim, in cash * * *.

Later in the hearing, the following was said (R. 9a-10a):

Mr. FREEMAN: I have a further application to limit the time of the United States of America to file a claim in this proceeding. And I am now handing your Honor a petition and order to show cause.

The REFEREE: There is a provision in the statute——

Mr. FREEMAN: Yes, there is.

The REFEREE: I want to see it.

Mr. FREEMAN: It is Section 369.

The REFEREE: Section 369 says under proved debts:

> 1. Have been proved but not allowed or disallowed, prior to the date of confirmation; or "unliquidated debts."
>
> 2. Are disputed or unliquidated, have been scheduled by the debtor, and are proved within such time as the Court may direct; or

"Arising from rejection of executory contracts."

3. Arise from the rejection of executory contracts by the debtor and are proved within such time as the Court may direct.

This comes within the last category.

Mr. FREEMAN: Yes, that is the last category.

The REFEREE: Well, I will sign this order * * *.

An order that the Government show cause why the time for filing its claim should not be limited (R. 10a) was signed before the plan was confirmed (Pet. 17a). This limit was set, after a hearing, as May 9, 1947 (R. 10a-12a), and a proof of claim and an amended proof of claim were filed on that date (R. 13a-19a, 21a-22a). Subsequently, on March 30, 1949, these proofs of claim were amended to demand $1,192.33 on one contract and $32,933.71 on the other (R. 22a).

On February 17, 1950, the debtor filed a petition to have these claims as amended reexamined and barred (R. 19a-24a). The referee denied this petition (R. 27a-33a; Pet. 15a-19a) because he found that (R. 32a; Pet. 19a):

> * * * provision was made for the disposition of the government claim at the confirmation. The evidence plainly demonstrates that the Court confirmed the plan upon condition that provision was made for the filing and determination of the government claim.

On a petition for review, the District Court reversed, holding that the claims were barred by Sec-

tion 367(4), *supra*, p. 2, on the grounds that no proof of claim had been filed prior to confirmation and that no authority existed for the informal scheduling of claims (Pet. 7a-14a).

On appeal, the court below reversed. Without deciding whether the requirements attending the filing of informal proofs of claim had been satisfied, the court held that "the disclosure by the debtor at the referee's hearing on confirmation of the plan that the Government had become a creditor was * * * in performance of its duty under the Act and amounted to an informal amendment of the list of creditors included in the debtor's schedules" (Pet. 5a), further observing that "Certainly the informal scheduling of the claim disclosed by the record served all the purposes in this case which a more formal procedure would have accomplished" (Pet. 6a).

ARGUMENT

Petitioner has emerged from Chapter XI proceedings with substantial capital in excess of all claims against it, including the present disputed claims of the United States. All unsecured creditors, except the United States, have received timely payment in full. As to the Government's claims, petitioner contends that the bankruptcy court is without jurisdiction even to consider their validity because although the referee was induced to confirm the arrangement on the representation by petitioner's counsel that the Government's claims could be filed thereafter, the presentation of those claims was, according to petitioner, barred by the confirmation of the arrangement. Specifically, peti-

tioner seeks to defeat the Government's claims notwithstanding the facts that (1) these claims were brought to the attention of the referee by the petitioner's own counsel, (2) counsel expressed the petitioner's desire "to bring [the Government] in" (R. 29a), and obtained an order limiting the time in which the claims could be proved, and (3) the plan was confirmed solely on the representation that provision could be made for the filing and determination of the Government's claims.

The technical arguments on which petitioner seeks to predicate this inequitable result are without merit. For it is settled that a bankruptcy court is "a court of equity at least in the sense that in the exercise of the jurisdiction conferred upon it by the Act, it applies the principles and rules of equity jurisprudence", and that such equitable powers may be "invoked to the end * * * that substance will not give way to form, that technical considerations will not prevent substantial justice from being done" (*Pepper* v. *Litton*, 308 U. S. 295, 304-305). These principles, applied to the narrow and unusual circumstances of this case, fully justified the conclusion of the court below that since "the informal scheduling * * * served all the purposes * * * which a more formal procedure would have accomplished" (Pet. 6a), the debtor's schedules should be regarded as informally amended to include the Government's claims so that they were within the jurisdiction of the bankruptcy court to entertain and allow. That conclusion correctly applies Section 369(2) of the Bankruptcy Act. Turning on the particular facts of this case, it presents no conflict and no basis for review by this Court.

Section 369(2) (*supra*, p. 3), vests jurisdiction in the bankruptcy court over debts which "are disputed or unliquidated, have been scheduled by the debtor, and are proved within such time as the court may direct." There is no question here that the first two elements were satisfied: the Government's claims were disputed, and they were proved within the time fixed by the referee in accordance with the petitioner's own request and suggestion. As to the third requirement, the court below found that the claims were scheduled as a result of the disclosures of the petitioner's counsel at the confirmation hearing and the action which the referee took on the representations made by petitioner's counsel. This finding is clearly justified by the facts.

Section 324 of the Bankruptcy Act (11 U. S. C. 724) provides for filing schedules and a statement of the debtor's affairs along with the petition for an arrangement, but the times for filing the schedules may be extended by the court.[4] Moreover, amendments may be permitted at any time, and it is part of the referee's duties to examine the schedules and "cause such as are incomplete and defective to be amended" (Section 39(a)(3), 11 U. S. C. 67(a)(3)). Indeed, to protect a creditor, amendments may be made after confirmation. *In re Everick Art Corp.*, 39 F. 2d 765 (C. A. 2); *In re Watman*, 291 Fed. 886 (S. D. N. Y.). Thus, as the

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[4] This is now expressly provided by an amendment passed in 1952, 66 Stat. 432, but the legislative history indicates that the amendment was intended to regularize general practice. H. Rep. No. 2320, 82d Cong., 2d Sess., pp. 18-19; Sen. Rep. No. 1395, 82d Cong., 2d Sess., pp. 19-20.

court below pointed out (Pet. 5a), petitioner's counsel was doing no more than his duty in bringing the existence of the Government's possible claims to the referee's attention, and in so doing he was in effect amending the petitioner's schedules.

Petitioner attacks this conclusion by arguing that the claims were indefinite at the time of the confirmation hearing (see, *e. g.*, Pet. 12). But even if the claims were indefinite, this does not mean that they could not be scheduled. For the scheduling of a claim is not the admission of a liability; it simply calls to the court's attention the fact that the claim exists. Surely, if the Government had terminated these contracts before the filing of the petition for an arrangement, the inclusion of its possible claims in the original schedules would not have been improper.

Petitioner further argues that its counsel's action could not be considered an informal scheduling because, it asserts, the Government's claims were not presented to the referee in writing under oath nor entered by him in the formal manner prescribed by the General Orders (Pet. 7-8). One answer to this might be that the referee's failure to require the formal procedure was a result of his reliance on the representation of petitioner's counsel that jurisdiction would continue in any event under Section 369(3) (*supra*, p. 3).[5] A

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[5] Section 369(3) provides that jurisdiction will be retained over claims arising from the rejection of executory contracts *by the debtor*. On the strength of the assertion that the Government's claims fell within this section the referee fixed a time for proving those claims. Had the assertion not been made, the referee might have held up confirmation until the claims

more important factor in favor of the holding that claims may be considered to have been informally scheduled when the interests of justice so demand is the fact that such a doctrine has long been accepted in connection with the filing of proofs of claim.[6] The same considerations which have led courts to accept informal proofs of claim when otherwise a creditor would be excluded from participation in the proceeds of the bankrupt estate argue in favor of recognizing informal scheduling. Moreover, as schedules are largely required for notice purposes, these considerations are particu-

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were scheduled or filed. Had he not done so, the Government could have petitioned for review of the confirmation order on the grounds that the arrangement did not "include provisions modifying or altering the rights of unsecured creditors generally or of some class of them." Section 356, 11 U.S.C. 756. See *Continental Insurance Co.* v. *Louisiana Oil Refining Corp.*, 89 F. 2d 333, 336 (C.A. 5).

[6] The courts have long recognized informal proofs of claim, which, even if they are themselves ineffective, may be amended to state a valid claim at a time when the original proof of claim could not be filed. *J. B. Orcutt Co.* v. *Green*, 204 U.S. 96; *In re High Point Seating Co.*, 181 F. 2d 747 (C.A. 2); *In re Kessler*, 184 Fed. 51 (C.A. 2); *In re Patterson-MacDonald Shipbuilding Co.*, 293 Fed. 190 (C.A. 9). The Government contended below that if the facts of this case do not support the conclusion that its claims were scheduled, they do indicate that informal proofs of claim were filed, over which jurisdiction was retained under Section 369(1) of the Act (11 U.S.C. 769(1)), and that the formal claims of May 9, 1947, were simply permissible amendments thereto, cf. *Hutchinson* v. *Otis, Wilcox & Co.*, 190 U.S. 552. The decisions in *In re High Point Seating Co.*, and *In re Lipman*, 65 F. 2d 366 (C.A. 2), were cited as particularly analogous to this case. The Court of Appeals did not rule on this issue, but we submit that it provides an alternative ground in support of the decision below that the bankruptcy court retained jurisdiction after confirmation to rule on the Government's claims.

larly pertinent where, as here, such informal scheduling occurs in an open formal hearing and where no one has been prejudiced thereby.

Finally, the fear expressed by the petitioner that the holding below will "make it possibe for creditors in countless cases" to contend that their claims have been scheduled by reason of "statements made at one hearing or another" (Pet. 9) are clearly exaggerated. Far from applying generally to situations where claims have simply been mentioned in passing, the holding below relates only to the unusual facts of this case. As shown *supra*, pp. 4-6, the existence of the Government's claims was specifically called to the referee's attention; the petitioner's counsel expressed a desire to bring the Government in; and the referee, at the express request of the petitioner's counsel, fixed the time within which the claims must be proved in an official order. The decision below passed only on the issue presented by these facts, was clearly correct in light thereof, and does not present a question of general importance which calls for review by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

SIMON E. SOBELOFF,
Solicitor General.
WARREN E. BURGER,
Assistant Attorney General.
MELVIN RICHTER,
JOHN J. COUND,
Attorneys.

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